

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

OREGON NATURAL DESERT ASS'N,)
et al.,)

Plaintiffs,)

vs.)

UNITED STATES FOREST SERV., et al.,)

Defendants.)

and)

OREGON CATTLEMEN'S ASS'N, et al,)

Intervenor-Defendants.)
_____)

Civil No. 03-213-KI

OPINION

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KING, Judge:

The Oregon Natural Desert Association (“ONDA”) and the Center for Biological Diversity (“CBD”) bring an action against the United States Forest Service and a forest supervisor, alleging that the federal defendants’ actions and inactions with respect to livestock grazing on the Malheur National Forest violate several environmental statutes. The Oregon Cattlemen’s Association (“OCA”) and individual grazing permittees have intervened as defendants in this action. Before the court is plaintiffs’ Motion for Preliminary Injunction (#79). For the following reasons, the motion is denied.

BACKGROUND

In 1988, Congress designated the corridors along the Malheur and North Fork Malheur rivers in eastern Oregon as “wild and scenic” under the National Wild and Scenic Rivers Act. These corridors provide important habitat for wildlife species such as beaver, elk, bald eagles, osprey, sage grouse, and spotted frogs. The rivers and their tributaries provide critical spawning, rearing and migratory habitat for bull trout, redband trout, and other important native fish species.

The Malheur National Forest manages the public lands within and adjacent to the Malheur and North Fork Malheur wild and scenic river corridors. Within the Malheur National Forest boundaries are livestock grazing allotments. At issue in this lawsuit is how the Malheur National Forest’s management of its thousands of acres, specifically its management of livestock grazing, affects the condition of these wild and scenic river corridors and the species that rely on them.

The Malheur Wild and Scenic River corridor is twelve miles long and encompasses 3,758 acres of public land. The Malheur's outstandingly remarkable values are scenery, geology, wildlife habitat, and history. The corridor includes portions of the Bluebucket, Dollar Basin/Star Glade, and Central Malheur allotments. The North Fork Malheur Scenic River corridor is 22.9 miles long and encompasses 7,034 acres of public land. The North Fork's outstandingly remarkable values are scenery, fisheries, geology, and wildlife habitat. The corridor includes portions of the Flag Prairie, Spring Creek, North Fork, and Ott allotments.

The Forest Service manages livestock grazing on the national forests by using three separate decisionmaking processes: federally issued grazing permits, allotment management plans ("AMPs"), and annual operating plans ("AOPs"), now called annual operating instructions ("AOIs").

A grazing permit is a "document authorizing livestock to use National Forest System or other lands under Forest Service control for the purpose of livestock production." 36 C.F.R. § 222.1(b)(5). Permits are generally issued for periods of ten years. *Id.* § 222.3(c)(1). Permits are issued according to a priority system tied to ownership of private "base property" and set limits on allowable numbers of livestock and seasons of use, based on an allotment's estimated ability to sustain certain average levels of use. *See, e.g., id.* § 222.3(c)(i), (ii); 43 U.S.C. § 1752 (explaining scope and requirements of grazing permit terms and conditions).

An AMP is an allotment-specific planning document that (1) prescribes the manner in, and extent to which, grazing operations will be conducted in order to meet multiple-use and other goals and objectives; (2) describes any range improvements in place or to be installed and

maintained to meet allotment objectives; and (3) contains any other grazing management provisions and objectives prescribed by the Forest Service. 36 C.F.R. § 222.1(b)(2).

An AOI is a signed agreement issued annually by the Forest Service to a permittee, which sets final authorized dates of grazing (“season of use”), pasture and grazing system rotations, numbers of livestock permitted for the upcoming season, monitoring and reporting requirements, and maximum limits of forage use by livestock. Each allotment is divided into pastures or units, which allows the Forest Service to authorize or not authorize grazing on certain portions of each allotment at different times and levels of use throughout the grazing season.

As discussed in this court’s February 11, 2004, Opinion, the agency makes different types of decisions in each document. To the extent that plaintiffs in this case challenge final agency actions (as opposed to alleged failures to act), of the three possible decisions, the plaintiffs challenge the AOIs. When plaintiffs first filed this action, the operative AOIs were the AOIs for the 2003 grazing season. In the course of briefing on this motion, the Forest Service has now prepared 2004 AOIs, and it submits the draft version of the AOIs as part of its evidence. The Forest Service represents that but for the permittees’ signatures on the new AOIs, the documents are final.

LEGAL STANDARDS

“The standard for granting a preliminary injunction balances the plaintiff’s likelihood of success against the relative hardship to the parties.” Clear Channel Outdoor Inc. v. City of Los Angeles, 340 F.3d 810, 813 (9th Cir. 2003). The plaintiff must demonstrate either: “(1) a likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious questions going to the merits were raised and the balance of hardships tips sharply in its favor.”

Id. “These two alternatives represent extremes of a single continuum, rather than two separate tests. . . . Thus, the greater the relative hardship to [the party seeking the preliminary injunction,] the less probability of success must be shown.” Id. (citation and internal quotations omitted).

DISCUSSION

Plaintiffs allege that defendants are violating the National Wild and Scenic Rivers Act (“WSRA”), the National Forest Management Act (“NFMA”), the National Environmental Policy Act (“NEPA”), and the Rescissions Act.

Plaintiffs allege that the Forest Service is violating the WSRA by failing to implement the Malheur and North Fork Malheur comprehensive river management plans it has issued, and by failing to “protect and enhance” the river corridors’ recognized “outstandingly remarkable values.” Plaintiffs also allege that the Forest Service is violating NFMA by failing to insure that the annually-authorized livestock grazing practices are consistent with the standards adopted by the Malheur National Forest’s Forest Plan. Finally, plaintiffs allege that the Forest Service has violated NEPA and the Rescissions Act by failing to undertake the required environmental analysis for the protection of wildlife, fish and other river corridor values. Plaintiffs seek declaratory relief and several forms of injunctive relief that plaintiffs allege will bring the agency into compliance with the law.

With respect to the instant motion, plaintiffs request an order prohibiting the Forest Service and the intervenors from authorizing, allowing, or conducting any grazing on any portion of the Bluebucket, Dollar Basin/Star Glade, Flag Prairie, Spring Creek, North Fork, or Ott allotments that lies within, or is not securely and permanently fenced from, the wild and scenic river corridors, until plaintiffs’ claims can be heard on the merits. Defendants argue that

plaintiffs greatly exaggerate the degraded condition of the areas at issue and, as such, plaintiffs cannot make a showing of either likelihood of success on the merits or irreparable harm. The intervenors agree with the federal defendants and further contend that any balancing of harms weighs against the entry of an injunction because of the effect the injunction would have on the ranchers' livelihood and the economy of the relevant areas.

As explained further below, my decision on the pending motion turns primarily on a balancing of the hardships. I am particularly concerned about the implications of entering an injunction on the eve of the grazing season. Despite my unwillingness to enter an injunction at this time, I set forth the following analysis to be sure the parties have my views of the evidence submitted thus far.

I. Likelihood of Success on the Merits/Irreparable Harm

A. WSRA and NFMA Claims

Plaintiffs allege that the federal defendants are in violation of several mandatory duties under the WSRA and NFMA. First, plaintiffs allege that the Forest Service is under a mandatory duty to implement the comprehensive management plans the agency prepared for the Malheur and North Fork Malheur wild and scenic rivers. Second, plaintiffs allege that the Forest Service has a mandatory duty to protect and enhance the outstandingly remarkable values for which the Malheur and North Fork Malheur wild and scenic rivers were designated. Finally, plaintiffs allege that the Forest Service is in violation of its duty to manage livestock within the wild and scenic river corridors consistently with Forest Plan standards.

1. Statutory Framework

Congress enacted the WSRA in 1968 to identify rivers that possess “outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values” and to preserve those rivers in free-flowing condition and protect them “for the benefit and enjoyment of present and future generations.” 16 U.S.C. § 1271. Section 3(d)(1) of the WSRA provides that the Forest Service “shall prepare a comprehensive management plan . . . to provide for the protection of the river values,” that the plan “shall address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of this chapter,” and that the plan “shall be coordinated with and may be incorporated into resource management planning for affected adjacent Federal lands.” 16 U.S.C. § 1274(d)(1). Section 12(a) of the WSRA provides that the Forest Service “shall take such action respecting management policies, regulations, contracts, plans, affecting such lands . . . as may be necessary to protect such rivers in accordance with the purposes of this chapter.” 16 U.S.C. § 1283(a). Finally, section 10(a) of the WSRA provides that “[e]ach component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values.” 16 U.S.C. § 1281(a).

NFMA governs the Forest Service’s management of the national forests. NFMA requires the Forest Service to develop, maintain and revise land and resource management plans (“LRMPs” or “Forest Plans”). 16 U.S.C. § 1604(a). NFMA provides that “[r]esource plans and

permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans.” 16 U.S.C. § 1604(i).

In a lengthy Opinion and Order dated February 11, 2004, this court denied the federal defendants’ motion for judgment on the pleadings, and concluded that each of these duties is a mandatory, non-discretionary duty under the WSRA or NFMA, which can give rise to plaintiffs’ claims for review of agency inaction or for review of actions that are alleged to be arbitrary and capricious.

2. Other Standards

Although the plaintiffs’ claims for relief in this action are based on alleged violations of the above cited statutory provisions, their success on these claims is linked to their ability to show that several other specific standards are not being met. The Forest Service has developed or adopted a number of ecological standards—derived from the river plans, the Forest Plan, the aquatic conservation strategy, and the bull trout biological opinions—that are incorporated into AOIs. I will briefly describe the other standards relevant to plaintiffs’ case.

River Plans and Forest Plan Standards--The Forest Service finalized management plans for the Malheur and North Fork Malheur wild and scenic rivers in 1993. These plans incorporate specific standards for grazing practices. Each plan also states that where the river management plan does not set a specific standard for a particular resource element or land use, the forest-wide management standards from the Forest Plan control.

The Malheur National Forest adopted its Forest Plan in 1990. The Forest Plan contains fisheries and watershed standards for non-anadromous riparian areas. The standards include, among others, requirements: to provide necessary habitat to maintain or increase populations of

“management indicator species,” including bull trout; to manage riparian vegetation to emphasize reestablishment of hardwood shrub and tree communities; to enhance water quality and fish habitat; and to maintain sufficient streamside vegetation to maintain streambank stability.

INFISH Standards--In 1995, the Forest Service developed the Inland Native Fish Strategy (“INFISH”), which is an aquatic conservation strategy that set management objectives and standards for twenty-two national forests within the range of bull trout habitat in parts of Oregon, Washington, Idaho, Nevada, and Montana. INFISH applies to the corridors of the Malheur and North Fork Malheur Rivers.

Also in 1995, the Forest Service amended the affected Forest Plans, including the Malheur National Forest LRMP, incorporating the INFISH standards and guidelines. Because the Malheur and North Fork Malheur wild and scenic river management plans defer to the grazing standards in the LRMP, and because those grazing standards were amended by the INFISH standards, the INFISH standards became the applicable livestock grazing standards within the wild and scenic river corridors at issue.

_____ INFISH grazing standard GM-1 provides that the Forest Service must:

Modify grazing practices (e.g., accessibility of riparian areas to livestock, length of grazing season, stocking levels, timing of grazing, etc.) that retard or prevent the attainment of Riparian Management Objectives or are likely to adversely affect inland native fish. Suspend grazing if adjusting practices is not effective in meeting Riparian Management Objectives.

See Plaintiffs’ Exhibit 15 at E-9.

_____ INFISH defines Riparian Management Objectives (“RMOs”) as “[q]uantifiable measures of stream and streamside conditions that define good fish habitat, and serve as indicators against

which attainment or progress toward attainment of goals will be measured.” Id. at E-3. INFISH establishes RMOs for attributes such as pool frequency, bank stability, bank angle, stream width-to-depth ratio, and water temperature.

_____The Forest Service defines “retard attainment of RMOs” as follows:

Measurably slow recovery of any identified RMO feature (e.g., pool frequency, water temperature, etc.) that is worse than the objective level. Degradation of the physical/biological process or conditions that determine RMO features will also be considered to retard attainment of RMOs.

See Plaintiffs’ Exhibit 18 at 6.

_____ *Bull Trout Biological Opinion Standards*¹--On June 10, 1998, the Fish and Wildlife Service listed bull trout as a threatened species under the Endangered Species Act (“ESA”). The population segment of bull trout in the rivers at issue is threatened by habitat degradation and fragmentation, blockage of migratory corridors, poor water quality, past fisheries management practices, and the introduction of non-native species.

_____Pursuant to section 7 of the ESA, the Forest Service is required to consult with the Fish and Wildlife Service to determine whether the federally authorized grazing activities may affect the threatened bull trout. Such consultation has occurred each year since 1999, resulting in Biological Opinions issued by the Fish and Wildlife Service on whether the proposed grazing was likely to jeopardize the continued existence of bull trout. The ESA consultation between the agencies established standards that dictate when livestock must be moved off of a particular allotment based on “triggers” for forest utilization, stream bank stability, and shrub use.

¹ I am confused by, and at this point reject, defendants’ arguments that these standards are inapplicable because plaintiffs have not brought an Endangered Species Act claim. If the standards have been incorporated into the challenged AOIs, I fail to see why they are irrelevant.

3. Whether Standards Are Being Met

The parties have submitted substantial evidence in the form of expert declarations, photographs, agency studies, and independent monitoring data. I will not discuss in detail the conditions on each allotment or make determinations about the specific points of disagreement between each side's experts, but I assure the parties I have thoroughly reviewed their submissions. I will set forth my broader findings and conclusions about the weight of the evidence that is currently before me.

Plaintiffs have submitted fairly convincing evidence that the Forest Service's management of livestock grazing has caused ecological damage to the riparian habitats of the Malheur and North Fork Malheur river corridors and their watersheds. Plaintiffs rely heavily on monitoring data collected by Christopher Christie and the expert reports of Beschta, Kauffman, and Rhodes. Both the federal defendants and the intervenors criticize the usefulness of the Christie data, but it appears to have been collected using the Forest Service's own protocol and is considered sound by plaintiffs' experts.

Plaintiffs' evidence shows numerous failures to meet the quantitative Biological Opinion standards and the INFISH RMOs for stubble height, bank damage, bank stability, shrub use, water temperature, width-to-depth ratio, and pool frequency. With respect to the RMOs, plaintiffs' experts have concluded that grazing occurring in these corridors is not only retarding attainment of these RMOs, but is often times causing continued damage. Plaintiffs' evidence also suggests that the Forest Service is failing to meet the Forest Plan and river plans' standards that are more narrative in nature.

The Forest Service makes brief arguments in response to plaintiffs' arguments that they are likely to succeed on the merits. The Forest Service primarily criticizes plaintiffs for failing to acknowledge certain changes reflected in the 2004 AOIs. It makes very general arguments regarding "appropriate" or "meaningful" modifications. When asked to expand on the changes in the 2004 AOIs at oral argument, the Forest Service gave a few examples of specific reductions in the numbers of livestock allowed and animal unit months ("AUMs"). The intervenors contend that the changes in the 2004 AOIs are very restrictive. I do not feel I have sufficient information to fully evaluate the effect of the new AOIs. I do not fault plaintiffs for being unable to provide a detailed analysis, as the "final" AOIs were not filed with the court until the day before the hearing on the instant motion. I am optimistic that the changes made in the AOIs will have beneficial effects on the degraded areas,² but because of the substantial evidence suggesting that full resting may be needed in many of the areas, I am doubtful that these changes will fully remedy the harms at issue.

At oral argument, the Forest Service conceded that many of the relevant standards have not been met. The agency would be hard-pressed to state otherwise, as some of its own records reflect as much. For example, plaintiffs provide a letter from District Ranger Richard Haines to other agency staff stating that "some of the heaviest utilization I have observed on the District occurred this year." Plaintiffs' Exhibit 23 at 2. He noted that "it is also a disappointment in knowing that some of these areas have exceeded standards in the past few years and the emphasis of the strategy for this year was intended to alleviate the problem. I think a case can be made in a

² For example, plaintiffs acknowledge the appropriateness of the agency's proposed decision to rest the Dollar Basin/Star Glade Allotment's South Star Glade and Dollar units for this season.

few instances that wildfire complicated access to certain pastures to maintain effective monitoring. However, the pattern of heavily utilization extends beyond those areas.” Id.

Notwithstanding the concession that certain standards are not being met, the Forest Service maintains that the conditions on the ground are not nearly as devastated as plaintiffs contend. However, the agency submits very little evidence in opposition to the motion. It primarily relies on a document entitled “Trip Report: Malheur National Forest,” produced by Borman, Krueger and Stringham of Oregon State University. In the report, the authors selectively criticize findings of plaintiffs’ experts and examine certain allotments using the Proper Functioning Condition (“PFC”) methodology. In its brief, the Forest Service says boldly that “[p]laintiffs’ penchant for dramatic rhetoric and ‘puffery’ that apparently is designed to arouse concern to support their request for a preliminary injunction is far keener and more reliable than is their ability or willingness to carefully and thoughtfully describe the actual conditions of the resources at issue in this case.” Fed. Defendants’ Memo. at 28. After lodging such accusations, the agency contends that it has, in contrast to plaintiffs, submitted evidence in the form of the Trip Report that properly addresses the issues before the court. Remarkably, though, the Forest Service presents no data to counter the plaintiffs’ data, nor does it make any effort to point to aspects of the Trip Report or other evidence that it believes actually rebuts plaintiffs’ arguments.

I have reviewed the Trip Report and question the weight it should be afforded. The Trip Report, as well as the intervenors’ expert reports, rely on PFC methodology to support the conclusions that grazing is not causing ecological harm to the river corridors. As explained by the second declaration of plaintiffs’ expert Rhodes, the PFC method is a *qualitative* method.

Rhodes cites to numerous sources which question the usefulness of the methodology because it is considered highly subjective. See also Ore. Natural Desert Ass'n v. Singleton, 47 F. Supp. 2d 1182, 1189 (D. Or. 1998) (noting that PFC analysis does not equate to finding that the WSRA requirements are being met). Finally, I question a number of conclusions in the Trip Report as far as they criticize the Christie data. It would appear that the authors of the Trip Report were asked to review monitoring data and photos associated with a different lawsuit.

The Forest Service also relies on its own determinations in its 2004 Biological Assessments that grazing under the 2004 AOIs is not likely to affect bull trout. The agency must acknowledge, however, that the Fish and Wildlife Service's Biological Opinion regarding this season's grazing and the effect on bull trout has yet to issue.

Plaintiffs have made a strong showing that standards are not being met and that they are likely to prevail in proving violations of the WSRA and NFMA provisions at issue.

B. NEPA/Rescissions Act Claim

Plaintiffs allege that the Forest Service violated NEPA and the Rescissions Act by authorizing grazing on the allotments at issue in the absence of updated NEPA analyses and without adhering to an established schedule for completion of the analyses. Plaintiffs allege that many of the allotments at issue in this case either have no AMP or have AMPs and related environmental analyses that are decades old and have not been updated to account for new information and changed conditions, the designation of the wild and scenic river corridors, the listing of threatened species, and other factors. Plaintiffs also allege that the agency has failed to reinstate the NEPA process for all of the grazing permits, AOIs, and other ongoing

authorizations of grazing on the corridor allotments even though new or supplemental NEPA analyses are required.

NEPA requires that federal agencies prepare an environmental impact statement for “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). NEPA regulations also require federal agencies to prepare supplemental environmental analyses when there are “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii).

The 1995 Rescissions Act established a temporary exemption from NEPA review for grazing permits that were up for reissuance. Pub. L. No. 104-19 Stat. 194 (1995). The Act also required the Forest Service to establish and adhere to a schedule for conducting and completing NEPA analyses for all allotments within each Forest System Unit in accordance with NEPA. *Id.* at § 504(a). If a permit expired prior to the scheduled completion of NEPA review, the permit would be reissued under the same terms and conditions as the expiring permit. *Id.* at § 504(b).

In the early spring of 2003, Congress passed two appropriations bills which also affect the completion of NEPA analyses for grazing permits. *See* Pub. L. No. 108-7, 117 Stat. 11, § 328 (Feb. 20, 2003); Pub. L. No. 108-11, § 2401 (April 7, 2003). These appropriations “riders” allow the terms and conditions of a grazing permit renewed prior to or during 2003 to remain in effect until the NEPA analysis is completed.

Finally, on November 10, 2003, the President signed into law the 2004 Department of Interior and Related Agencies Appropriations Act, Pub. L. 108-108, 117 Stat. 1241. Section 325 of that Act provides additional detail on Congress’ intent to allow grazing permits to remain in

effect. Section 325 provides that “notwithstanding section 504 of the Rescissions Act,” the priority and timing of the completion of environmental analyses for Forest Service grazing allotments is to be left to the “sole discretion” of the agency. For permits renewed prior to 2004, the Act provides “the terms and conditions of the renewed grazing permit shall remain in effect until such time as the Secretary of Agriculture completes the process of the renewed permit in compliance with all applicable laws and regulations or until expiration of the permit. . . .” For grazing permits expiring between 2004 and 2008, the Act provides that those permits “shall be renewed” under the same terms and conditions until the agency “completes the processing of such permit or lease in compliance with all applicable laws and regulations, at which time such permit or lease may be canceled, suspended or modified . . . to meet the requirements of such applicable laws and regulations.”

The Forest Service dedicated much of its briefing and argument to discussing the appropriations bills. It contends that by explicitly committing the scheduling of environmental analysis of grazing allotments to the sole discretion of the agency, Congress has divested the federal courts of the jurisdiction to schedule such analysis as a remedy for the Forest Service’s failure to complete the analysis in a timely manner. Because the court cannot, according to the agency, redress the plaintiffs’ alleged injuries with respect to this claim, they also have no standing.³ The Forest Service argues that plaintiffs lack standing to pursue this claim and the

³The Forest Service also makes more broad-sweeping challenges to the plaintiffs’ standing elsewhere in its briefing. It argues that even if plaintiffs could show harm to the environment, they have not shown the likelihood of irreparable harm *to them*. I find this argument meritless. Plaintiffs have submitted ample evidence that, for example, some of ONDA’s members extensively use and recreate in the area, and indeed dedicate a good part of their time to trying to protect it. I conclude plaintiffs have standing.

court lacks jurisdiction to hear it, therefore plaintiffs are unlikely to succeed on the merits. And, again, beyond the merits of this specific claim, the Forest Service appears to believe that these appropriations bills strip me of my ability to enter the preliminary injunction plaintiffs seek in the first place. Aside from discussing the appropriations bills, the Forest Service makes no attempt to argue that it has actually complied with NEPA.

Plaintiffs dispute the agency's reading of the statutory amendments. Plaintiffs believe that nothing in the amendments prevents the court from declaring that the Forest Service violated NEPA by issuing the permits and annually authorizing grazing through AOIs without the required analyses and that it violated the Rescissions Act by failing to adhere to a schedule for such analyses. Nor do plaintiffs believe the bills prevent the court from establishing a schedule for NEPA analyses.

At least with respect to a declaratory judgment on this claim, I agree with plaintiffs. Additionally, I do not believe the amendments affect my ability to consider injunctive relief on any of plaintiffs' other claims. Congress's action appears to prevent courts from vacating permits, but that is not what the plaintiffs are seeking here. I conclude that plaintiffs are likely to succeed at least in part on their NEPA/Rescissions Act claim.

Overall, I conclude based on the evidence before me that plaintiffs have made a strong showing on the merits and I conclude that grazing is likely causing ecological damage in the areas at issue.

II. Balancing Hardships

The six allotments at issue involve twelve livestock ranches, some of which are multiple family ranches. The OCA estimates that 18 to 24 families would be adversely and immediately

affected by the issuance of the injunction requested by plaintiffs. Because grazing is done on most allotments in a rotation system, if grazing is enjoined on a given unit for which livestock were set to graze, the intervenors have told the court that they quite literally have nowhere else to put the livestock during the allocated time. Given that this motion is being decided right up against the start of the grazing season, I am greatly influenced by the lack of time the ranchers would have to mitigate the effects of the injunction.

Plaintiffs correctly note that economic harm is typically not enough to tip the scales against issuance of an injunction to protect the environment. However, because of the posture and the timing of this case, the implications of the injunction appear to reach beyond just lost profits. In balancing the hardships, I find that they tip slightly against the issuance of an injunction at this time.

Having concluded this, I wish to make a few final observations about the way the court views this case. I acknowledge the Forest Service's and the intervenors' statements regarding the historic place ranching has held in the West. However, the way in which grazing has been managed on these lands is clearly at odds with the statutory mandates related to the protection of the river corridors and the species that depend on them. In order for the Forest Service to comply with its duties, I suggest the agency begin to examine more drastic changes. For the reasons I have already stated, I choose not to impose an injunction so close to the grazing season, but I have concluded that the plaintiffs have made a strong showing on the merits, and therefore the entry of an injunction before the start of the next grazing season may ultimately be the way in which this case is resolved. Finally, without coming to specific conclusions about the 2004

AOIs, I hope it goes without saying that the court is expecting full compliance with the terms of the 2004 AOIs.

CONCLUSION

For the foregoing reasons, plaintiffs' Motion for Preliminary Injunction (#79) is denied. The Temporary Restraining Order (#112) signed on June 3, 2004, is dissolved. The parties are again directed to confer regarding a method and a schedule for resolving the merits of plaintiffs' case, including the appropriate deadline for the Forest Service to produce the applicable administrative record. The parties shall submit a proposed schedule to the court no later than June 30, 2004. If the parties cannot reach agreement regarding a proposed schedule or other issues, each party is directed to set forth its position in a letter to the court, due on the same date.

Dated this 10th day of June, 2004.

/s/ Garr M. King
Garr M. King
United States District Judge